Taking a Risk With At-Risk Kids

A New Look at Reasonable Efforts

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This article proposes a new approach to assist special-needs children and their families in dependency court. The courts have historically viewed the federal "reasonable efforts" requirement as a means of providing services to parents. For some children and families, reasonable efforts to reunify the family should be enlarged and recategorized to include community resources that are mandated for special-needs children under federal entitlements. The authors propose that courts and family service agencies help parents become advocates for their children's special needs, thereby allowing the courts to terminate jurisdiction more quickly and ultimately reducing the number of families in dependency. ■

In countless juvenile courts all over the United States, the same scenario is enacted day after day: Standing before a bench officer, a family in crisis is adjudicated into some form of dependency oversight by the court and child welfare agencies. And during the pendency of the case, a boilerplate set of services is offered to assist the family in ameliorating the problems that brought the child into the system.

Unfortunately, the services provided to children and families often do not address their underlying problems, even though the law requires that services respond to the unique facts in each case. This is particularly true for a specific group of children: those who come before the court with full-blown problems separate and apart from, even if caused by, the current family dynamics. These problems may include mental health concerns, undiagnosed special education needs, and unassisted developmental delays. For some families, the child's needs and the parent's inability to meet them is the only dependency issue. When child welfare services do not address the underlying problems, often the result is that children remain under the jurisdiction of the court, even when the parents are capable of providing appropriate care.

The courts and family service agencies have a mandated responsibility to protect children and, when possible, to preserve families. American law has historically respected parents' interest in the care, custody, and management of their children. The Constitution protects this interest, and any governmental attempt to interfere with it must be justified by a legitimate state interest and accompanied by adequate procedural safeguards.[1] Unless the child's health and welfare are at issue, decisions about housing, education, religion, discipline, and other issues are left to the parent. The dependency system's purpose is to protect children in families that have deteriorated to the point where the children's health and safety are at issue. However, the dependency court can rapidly become a surrogate parent for the whole family, in essence mandating a way of life for the family consistent with an institutionalized view of how a "family" should look.

A new perspective on the reasonable efforts required by federal law to reunify families is needed if we are to assist these at-risk children and their families more effectively. The safe and timely reunification of the family will require the family services agency to pursue a two-pronged approach: (1) to respond to dysfunctional family dynamics by providing services to the parents, both alone and conjointly with the child, and (2) to provide the child with an independent set of community-based services that will be waiting in place when the parents are ready to reunify with the child. The issues and suggestions presented in this article attempt to address how to use more community resources outside the usual dependency resources so that more children may be sent home more quickly.

REMOVAL AND REUNIFICATION

A lengthy study undertaken by the Child Welfare League of America found that the best place for children is in their own homes with their own parents.[2] The study

looked at how children fared in foster care or at home even if their parents were less than parental. It does not take much to conclude that even children who were poorly parented preferred home to foster care. Obviously, children who are neglected and abused cannot remain at home, but that does not alter the fact that most children want to *be* home.

Congress endorsed this belief by enacting the Adoption Assistance and Child Welfare Act in 1980.[3] The mandate to the states was clear: Make reasonable efforts to maintain the child in his or her family home. The act authorized appropriation of federal funds to prevent placement outside the family home, to reunify families if possible, or to provide a permanent plan for the child if reunification proved impossible.[4] Each state was required to devise a case plan for the family in the event of the child's removal in order to return the child as quickly as possible in light of the circumstances of removal[5] or, if no return was possible, to proceed to a stable, permanent plan.

In California, the Welfare and Institutions Code has set out the process and procedure by which this return is to be accomplished. The goal is to prevent a child's placement outside his or her home and to facilitate reunification if appropriate.[6] Section 300 of the Welfare and Institutions Code states: "It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life …."[7] Services focus on preservation of the family. Section 300 also sets out the grounds for removal, which include physical abuse or neglect or sexual abuse of any child and severe abuse of a child under age 5 by a parent or another person whom the parent knew or should have known posed a danger to the child.[8] The statute also permits removal of a child whose sibling has been abused or neglected and who also faces a substantial risk of abuse or neglect.[9]

"Services to the family" has historically meant the use of a social services agency's battery of referrals to assist parents in overcoming whatever detrimental behaviors led to the child's removal. This is usually a boilerplate that includes drug rehabilitation; domestic violence prevention, anger management, and parenting classes; and a formula of individual, conjoint, and family therapy intended to address the family's needs. The assumption, however, is always that parents are the perpetrators of the family's problems and that the children are victims. This is not, however, an accurate assessment in homes where the children have become violent or otherwise "out of control" because of a combination of family structure and their own special needs arising from "disabilities." Historically these are the most difficult children to return home once they have entered the dependency system. If there is no alternative way of responding to these children's situations, they will go from foster home to group home to hospital or delinquency. They will be absorbed into the system permanently; no family structure, either natural or foster, will appear capable of caring for them by itself.

Even so, when the child welfare department or the court has determined that the parents pose little or no risk to these children, they should be allowed to return home. Frequently, this does not happen because of the system's focus on the parents' problems and the social worker's inadequate knowledge or understanding of policy. Especially when there is more than one child, the tendency is to get the "healthy" kids home and leave the most troublesome for later, even though appropriate services are available in the community to help these children return home and their parents cope. The discussions that follow set out a legal framework and process through which attorneys and the courts can access legally mandated community resources to assist troubled children.

LEGAL FRAMEWORK FOR COMMUNITY RESOURCES

The children discussed in this article meet the legal definition of *disability*, which qualifies them for services from at least one of California's three service delivery systems: local educational agencies such as school districts, mental health agencies, and regional centers for the developmentally disabled. This section summarizes the pertinent provisions of the federal and state laws that govern these services. It concludes by describing the joinder provision that the juvenile court may use when a recalcitrant agency fails to meet its legal obligations to a child.

SPECIAL EDUCATION

Prior to 1970, legal involvement in the education of children with disabilities consisted of legislative, administrative, and judicial activity either permitting or requiring their exclusion from public education. Finally in 1970, Congress, persuaded by parents and compelled by federal court decisions mandating the education of children with disabilities, passed the Education of the Handicapped Act.[10] This statute remains the backbone of the federal law governing special education. The act itself has been amended and renamed several times, most recently as the Individuals With Disabilities Education Act (IDEA).[11] Its basic purposes have, however, remained consistent over the years: "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs [and] to ensure that the rights

of children with disabilities and parents of such children are protected …."[12] The statute and the implementing regulations[13] set forth in great detail the substantive and procedural rights of disabled students. California passed its own statutes and regulations implementing the federal requirements.[14] To qualify for special education and related services under IDEA, a child must be at least 3 and no older than 21 years of age[15] and must satisfy both parts of a two-part test. First, the child must fall within one or more of the 13 categories of disability defined by IDEA.[16] Second, the student's need for special education and related services must be a result of his or her disability.

The cornerstone of any special education program is the Individualized Education Program (IEP), the written document that memorializes the essential components of the child's appropriate educational program.[17] The IEP is developed at regularly scheduled meetings that provide an opportunity for parents, educators, the child, and others to discuss and collaboratively develop the child's educational program. In addition to specially designed instruction, IDEA requires that the IEP include any related services that the child requires in order to benefit from special education. These services include "transportation, and … developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only)."[18] The term also includes "parent counseling and training" and the "early identification and assessment of disabling conditions in children."[19] Though there are no specific timelines for implementation of the IEP, the federal regulations direct the school to implement the IEP "as soon as possible following the [IEP] meetings."[20]

In addition to the IEP process, IDEA and its predecessors require procedural safeguards "designed to afford parents or guardians of handicapped children meaningful involvement in the educational placement of their children."[21] These safeguards—including the rights to examine records, receive notice of changes to the IEP, and present complaints[22]—constitute a powerful tool with which parents may challenge the school's recommendations for the education of their child.

MENTAL HEALTH SERVICES

In California's mental health service delivery system, two programs, AB 3632 and Medi-Cal, create an entitlement to services. The component of the latter program that serves children is called Early and Periodic Screening, Diagnostic, and Treatment (EPSDT). Children are eligible for EPSDT services from birth until they turn 21.

AB 3632 Mental Health Services

The California Legislature passed Assembly Bill 3632 in 1984.[23] This law, as subsequently amended, requires the state Department of Mental Health or community mental health (CMH) services to provide psychotherapy and other mental health services to help children with disabilities benefit from their educational programs.[24] The regulations define AB 3632 mental health services as including individual, group, or family psychotherapy; collateral services; intensive day treatment and rehabilitation; evaluation and monitoring of psychotropic medication; and case management.[25] These services are available to any legally disabled student who needs them. If the student is identified as emotionally disturbed, he or she may be placed in a residential treatment facility.[26]

To obtain AB 3632 mental health services for a special education child, the school district must refer the child to the appropriate CMH unit. At that time, CMH evaluates the child and returns to an IEP meeting with recommendations for services. Once the services are written on the IEP, they become an entitlement and CMH must provide them. All the procedural safeguards available under IDEA also attach to AB 3632 mental health services.

Medi-Cal Services (EPSDT)

Children with mental disabilities are entitled to receive a broad array of home- and community-based mental health services under California's Medi-Cal program. These services are provided to all Medi-Cal–eligible persons through CMH. The EPSDT program, established as part of the federal Medicaid Act,[27] requires the state to ensure that diagnostic and treatment services are given to children "to correct or ameliorate defects and physical and mental illnesses and conditions covered by the screening services, whether or not such services are covered under the State plan."[28] The key to accessing CMH services is a determination by a mental health provider that a specific service is necessary to correct or ameliorate a mental illness. Once a mental health provider determines the appropriate CMH services needed to correct or ameliorate the mental illness, CMH has an obligation to provide the services.

Medi-Cal covers many services, including, but not limited to, individual or group therapies or interventions; rehabilitation services that improve daily living skills and social and leisure skills; crisis intervention; crisis residential treatment services; and targeted case management and

EPSDT supplemental services, which include family counseling, transportation to needed services, and other case management services.[29]

In a class-action lawsuit, a federal court in Los Angeles concluded that the Medicaid Act requires Medi-Cal to provide Therapeutic Behavioral Services (TBS), a new mental health service.[30] TBS provides short-term, one-on-one assistance to children or youth whose serious emotional problems, such as assaultiveness, poor impulse control, or self-injurious behavior, are too difficult for their families or foster placements to handle. The service is designed to intervene with children experiencing a transition or crisis and to enable them to overcome the behavioral obstacles to living at home.[31] Children can access TBS at home, at school, in a group home, or in the community, in the evening and on weekends, and at other times and places as needed. The availability of this service is critical to the safe return of a child to his or her parents.

REGIONAL-CENTER SERVICES

Regional centers were established in California by the Lanterman Developmental Disabilities Services Act[32] to help meet California's obligation to persons with developmental disabilities. Nonprofit corporations that contract with the state Department of Developmental Services have established 21 regional centers throughout California, each serving a specified geographical area.

Regional centers must provide initial intake and assessment services to persons with developmental disabilities, individuals who are at high risk of giving birth to a child with a developmental disability, and infants who have a high risk of becoming developmentally disabled.[33] Once someone meets the eligibility criteria, he or she is entitled to services from the regional center.

To be eligible for regional-center services, a child must have a developmental disability, including mental retardation, cerebral palsy, epilepsy, autism, or another nonspecified condition that either is related to mental retardation or requires treatment similar to that required for individuals with mental retardation.[34] The condition must also arise before the person is 18; continue, or be likely to continue, indefinitely; and constitute a substantial disability for the individual.[35] Conditions that are "solely physical in nature" or that are "solely learning disabilities" or "solely psychiatric disorders" do not qualify as developmental disabilities. It is, of course, possible for an individual to require services from both the mental health system and the regional-center system to treat a single condition.

Once the regional center finds that someone is eligible for services, the next step is to prepare the Individual Program Plan (IPP).[36] This written document is developed by the IPP planning team. The team includes the "consumer,"[37] his or her parents, anyone else who knows the consumer and can help in developing the IPP, and representatives of the regional center.[38] The plan must describe the child's needs, the goals and objectives of the program, and the services and supports needed to meet them.[39]

The services and supports that may be required to meet the individual needs of a regional-center consumer are very broadly defined[40] and include such things as transportation, behavior modification services, respite care, special equipment such as communication devices or computers, parent training, infant stimulation programs, recreation, social skills training, and any other service or support that is required to allow the individual with a developmental disability to live as productive and normal a life as possible in a stable and healthy environment.[41] Decisions on services and supports, including who will supply them, must be made by agreement of the planning team at the IPP meeting.

The Lanterman Act requires regional centers to implement the IPP by securing needed services and supports;[42] advocating for civil, legal, and service rights;[43] identifying and building circles of support;[44] ensuring the quality of community services;[45] and developing innovative programs.[46] The California Supreme Court has held that the Lanterman Act entitles all persons with developmental disabilities to the services and supports specified on the IPP. While the regional center has discretion on *how* to implement the IPP, the center has no discretion on *whether* to implement it.[47] The Lanterman Act also includes fair hearing procedures, which allow the consumer to challenge the regional center's decision to deny eligibility or services or to reduce or terminate a current service.[48]

For the children discussed in this article, the availability of regional-center services is a critical component in returning them to their parents. Regional centers can provide a full array of services and supports to these children and families. For those children who do not meet the eligibility criteria, there is no similar service delivery system.

JOINDER MOTIONS

Welfare and Institutions Code section 362(a) authorizes the dependency court to join any agency or private service provider that the court determines has failed to meet its legal obligation to a dependent child pursuant to an IEP or IPP. Once the court has joined an agency or a service provider, it may order the agency or service provider to provide services to the child only if the child's eligibility has already been established through an agency's administrative process.[49] Each of the agencies above—the local

educational agency, mental health agency, or regional center—as well as other agencies or private service providers, could be joined for failing to meet a legal obligation under this provision. For instance, a school district could be joined for failing to assess a child's eligibility for special education services in a timely manner or a regional center could be joined for failing to provide a service that is on the IPP.

THE DEPENDENCY PROCESS: COMPETING APPROACHES

When a child has been removed from his or her home, the local child welfare agency has the responsibility to protect the child, investigate and remedy the problem that led to removal, and reunify the family if possible.[50] If the child welfare agency determines that it must continue to detain the child, it must immediately petition the juvenile court to hold a detention hearing.[51] At this hearing, the court must determine whether "reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home …, and whether there are available services that would prevent the need for further detention. … If the child can be returned to the custody of his or her parent … through provision of those services, the court shall place the child with his or her parent … and order that the services shall be provided."[52] The court may order case management, counseling, emergency shelter care, in-home caretakers, respite care, homemaker services, transportation, parenting training, or any other services that could help alleviate the need for the child's continued removal. If the court orders the child detained, it must also order services to be provided as soon as possible to reunify the child and his or her family if appropriate.[53] The court must determine at each step of the dependency process whether reasonable efforts were made to provide services.[54] The problem is that these reasonable efforts to reunify the family usually focus on remedying the parents' behavior because the law guarantees parents due process. The parents' rights regarding their children underlie the statutory scheme.

THE TRADITIONAL AGENCY APPROACH

In most cases currently, the department does not obtain services to ameliorate the child's behavior, and, even if the parents resolve their problems, the child is placed out of his or her home in a setting both expensive and isolating. A certain insidious progression takes place when the child welfare agency assumes full responsibility for the family's rehabilitation. First, the parents come to rely on the agency's assistance and guidance and do not usually question the appropriateness of their child's placement. If they do, they are often told that the child requires "structure" and that the placement is better for him or her.

When children with disabilities unnecessarily remain in dependency, it is typically because their serious emotional and behavior problems lead them to appear "out of control." Moreover, the parents seem to lack the skills to successfully represent their child before the various service delivery systems that may be obligated to assist him or her. As a result, the child welfare agency takes full responsibility for the child, and the parent is either shunted aside or fades into the background.

Another, more complicated situation arises when the child is removed because of the parent's drug addiction or abuse of the child. The parent subsequently rehabilitates, but the child welfare agency refuses to send the child home because of his or her own behavior.

Let's look at an example. The child has undiagnosed special education needs, and the mother, who may also have those needs, has coped in life by using street drugs. Living in a situation that is increasingly unable to meet his needs, the child begins to act out at home, at school, and in the community. The school does nothing; the behaviors are not so antisocial that the police have become involved. The mother, at her wits' end, resorts to beating the child with a belt. At school, teachers notice the marks and call the child welfare agency, which files a petition for removal. An investigation reveals the mother's drug use, her inability to get proper services for her disabled child, and her use of physical discipline on a regular basis. The mother is contrite and loving. She enters a drug rehabilitation program, readily follows the court order against physical discipline, and begins to test clean and work well in her drug treatment program. The child, however, now living in foster care or with a relative, has spiraled more and more out of control.

Given the mother's rehabilitation, the court would, at this stage, explore the possibility of returning the child home with services to the family. However, the mother is still fragile, and the child has moved from relative to foster home to group home and is displaying behaviors that indicate his inability to handle a home situation without on-site services. Because the court has made orders only with respect to the mother's treatment (except, perhaps, to order some therapy for the child), the mother is not in a position to have the child return home, even though she poses little risk to him any longer.

A parent's poor relationship with a child can compound the problem. Often a parent's prior habits or failure to establish parental authority have caused the child to mistrust the parent and refuse to follow his or her rules.

Alone and frightened, in an out-of-home placement, the child does not behave in a manner consistent with a return home and therefore ends up living in a group home even though the problems that led to the removal have been resolved. The child's emotional problems frustrate the parent, who believes he or she can no longer provide parental authority of any kind. This frustration, coupled with the child's self-destructive behavior, leads the parent to abandon the child.

When a court continues the child's out-of-home placement without recognizing the changed posture of the case, it helps the parents and the dependency system to "judicially abandon" these children and allows the child welfare agency to take over their care, custody, and control. And at a very basic level, by agreeing to out-of-home placement and thus abdicating the responsibility of providing the advocacy that tells children they are valued, the parents effectively tell their children that they are not worth the effort of parenting and, thus, prolong the cycle of dependency.

The effects are far-reaching. All recent studies on the physical separation of children from their parents, including studies of children of divorce, indicate that the long-term consequences of removing children from their parents' home are far more serious than previously thought. In many instances, these problems can be avoided. If the original cause of the child's removal from the home has been alleviated or ameliorated, but the child continues to live in a group home solely because of his or her behavior, the only appropriate recommendation is to return the child to his or her parents' home.

The issue in these cases is not *whether* the child should remain in placement, but *how* the child can return home. For financial, emotional, and practical reasons, and as a matter of public policy, children who are not at risk of abuse or neglect at home should return home. Each removal of a child from his or her home costs the government money, and each more restrictive placement costs more money, up to thousands of dollars a month for placement in a group home. By returning these children home, the courts can help save much of this money and redirect the rest to provide effective in-home services. It does not take a therapist to know that a child who is cared for and protected by a natural parent has a better chance for adult success than one who is not.

THE COMMUNITY RESOURCE APPROACH

The court and attorneys should reject the existing paradigm. Through the use of IDEA- and state-mandated services, parents can act as advocates for their children, building a relationship of trust and eliminating the need for dependency jurisdiction. The right of parents to raise their children coexists with the right of children to adequate services to meet their needs.

Thus, the child welfare agency should strive from the very beginning of the dependency process to eliminate parents' dependence on social services—that is, to enable parents to make competent decisions for themselves and their children—as soon as possible. The longer the social service agency "makes the rules" for the family, the less time or incentive parents have to learn to advocate for their children. In other words, the agency should seek to foster an atmosphere that requires minimal social services to protect the child, maximizes parents' ability to lead an autonomous life, and, thus, permits provision of services for the child at home.

The phrase "at home" does not necessarily mean that the child is *physically* in the home. A child can be placed at home[55] while residing in a group or residential facility. This placement can be accomplished expeditiously by using special education or mental health residence options, each of which can be controlled by a parent's choice and neither of which requires an agency agreement. Parents can access these resources while the family is still receiving child welfare services. To realize this goal, all parties in dependency proceedings must focus, not on mere provision of services to the family, but on empowering parents by teaching them how to advocate for alternative community resources.

Let's consider one such situation. Joe C. is 8 years old. He has been diagnosed with fetal alcohol syndrome and has a history of severe and uncontrollable assaultive behavior. At birth, he was removed from his mother's custody and placed with his paternal grandparents for almost three years. He was then returned to his mother, only to be removed again shortly thereafter. After his mother objected to another placement with his paternal grandparents, the court placed Joe with his maternal grandmother and uncle, in whose home he was physically and emotionally abused. Removed from that home, he was placed in a group home because of his increasingly hostile behavior. His paternal grandparents continued to request placement, and Joe began weekend visits with them. The paternal grandparents reported that Joe's behavior at home on weekends was acceptable. The group home, by contrast, continued to report that Joe's behavior was out of control and imposed more and more restrictions on him. In one month, according to the group home, his behavior required 50 instances of "proning," a method of restraint that required five adults to hold Joe down. While the number of episodes of proning decreased when the visits begun, they began escalating when Joe was not permanently

returned to his grandparents' home because of the group-home recommendation to the court. The grandparents started counseling in order to meet Joe's special needs. Therapy for Joe and his grandparents began during the weekend visits.

The group home's therapist and administration continued to insist that Joe needed the structure of its program. The therapist indicated that Joe's behavior would escalate immediately at home and that he would be removed again at great emotional cost to him. The court ordered that all professionals involved in the case meet to plan a program of return. This decision was conveyed to Joe. Again the group-home experts recommended against return.

The grandparents, with the help of a "modeler" (in this case, the child's attorney), requested an assessment from the school district for special education services.[56] They requested, at the same time, an assessment from county mental health for AB 3632 services. When the assessments were completed, the IEP team determined that Joe was eligible for services. The team placed him in a "non–public school"[57] and made a referral for therapeutic behavior services[58] to assist the family with Joe's behavior in the home.

Joe's counsel brought a motion pursuant to Welfare and Institutions Code section 388 to vacate the previous order of suitable placement and send Joe home to his grandparents. Joe's counsel had intervened on his behalf in the community, and a variety of services awaited him upon his placement with his grandparents. Joe's counsel and grandparents had used community resources to map out a continuum of care. The court granted Joe's section 388 motion because both criteria for approval, changed circumstances and best interest of the child, were met. Joe returned home. Although he continues to experience some problems as this article goes to press, he remains successfully in the care of his grandparents and jurisdiction has been terminated.

The return of at-risk children to their parents or guardians does not, of course, solve all of their problems. They may continue to act out or need continuing support services, but they do not necessarily need the dependency system to provide services. Services can be provided by local educational agencies, mental health agencies, or regional centers. Given this array of services, these children are no longer "at risk of detriment" as contemplated by Welfare and Institutions Code section 300.[59] Their families and communities can and should meet their needs.

Whether the child is in the process of returning home or has just returned, the court should maintain jurisdiction of the family and child while the "service blueprint" is being developed. If any one of the agencies obligated to provide services to the child refuses or fails to provide them, a joinder motion can be filed in the dependency court.[60] The child's attorney usually brings the motion for joinder, but any interested party may do so. The dependency court is authorized to hold a hearing in any instance where a mandated provider has failed to meet its legal obligation to a child. Most commonly, this is in the area of special education, mental health, or regional-center services. The court can hear testimony and issue orders regarding the services to be provided. The only prerequisite for judicial intervention is that the child has been found eligible for the services through the mandated administrative process.

With the new statewide addition of the federally funded Title IV-E "wrap-around" services, or TBS, some interagency cooperation is finally available for families who need it. This service provision model seems to contemplate coordination of services, modeling for parents or caretakers, and direct advocacy. This scheme comprises exactly what needs to be provided to these families. The provision of these services may greatly assist a family in the return of a child, and a refusal or denial of these services would be a proper reason for joinder.

THE ROLE OF BENCH AND BAR

The object in dependency is not unlike that in tort law: lawyers and judges try to help families in crisis become whole. When the parties expect social services to co-opt parental authority in decision making, parents lose an important right—the right to advocate for their children. That they may need help to understand school, mental health, or regional-center processes for determining eligibility does not make less important the goal of maximum advocacy by parents in order to keep children in the home.

The use of individualized service blueprints is a recognition that we are in a time of expanded need and diminishing resources. Juvenile courts must avoid scattershot approaches to individual problems. They must be aware of the various alternatives available for families and how to access them. They can then tailor service programs to meet the particular needs of individual families. Some relatively stable parents are unable to advocate for their special-needs children only because of a lack of assertiveness, education, or information. However, most parents in dependency require more. For example, for drug-addicted parents, getting sober is clearly step one of a long and difficult process. Maintaining sobriety is a frustrating experience, made even more tenuous when the parent, who herself may have been a special-needs child, is trying to raise children who have lost their trust. Yet it is extraordinary

how many parents in dependency are actually able to make that journey if they are given the support they need.

What must the bench and bar do to assist these parents and their children? It is our job to know where the systems interact and help the parent navigate those systems by example and through hands-on assistance. Requesting assessment for special education services, mental health services, or regional-center assistance is exhausting and can be debilitating to a newly sober or timid parent. Lack of self-esteem, financial difficulties, and poor language skills add to the problem. The juvenile court and the lawyers involved in the case should work to ensure that the social worker, instead of simply continuing to request services through the child welfare agency, assists the parent by helping him or her make requests of service providers and follow up on them.

One important benefit of the community resource approach is financial. A placement made by the agency in a group home or residential treatment center normally is billed to the parent. However, a placement, even of a dependent child, through a legally held Individualized Education Program, is free to the parent under IDEA. Therefore, an IEP placement enables the court to terminate jurisdiction in a case where otherwise the financial obligation of the parent would be a continuing issue.

Until jurisdiction terminates, the court can and should assist parents with their concerns about the education and mental health of their children. Reasonable efforts do not end with "fixing" the parent or with the child's return home. They also include helping a parent or relative advocate for the child even after the agency has helped the parent remedy the reasons for the child's removal. Only when a child who can go home has actually gone home, either physically or through provision of services obtained through the parent's advocacy, have reasonable services been provided.

IMPLEMENTING THE COMMUNITY RESOURCE APPROACH

With some modification in approach, the court, with the child welfare agency, can readily implement the process of accessing community resources. First, at the detention hearing, the court should order the child welfare agency to provide all psychological and educational information in the jurisdictional report, including copies of any existing special education programs (IEPs) or programs from regional centers (IPPs). This information will acquaint the court with any services currently being provided to the child, as well as the reasons for them.

While the court retains jurisdiction, it can issue orders to help parents seek services for their children. For example, the court can order the child welfare agency to assist a parent in requesting an assessment of eligibility for special education services pursuant to Education Code section 56,320 et seq. This assessment starts the statutory timeline.[61]

If the child is placed in a group home and the parent retains the right to make educational decisions, the parent must be notified of and may participate in any assessment or educational meeting. Meanwhile, parent and child should be in family therapy, in the group home if necessary. The child should receive mental health services commensurate with his or her need for them. If the parent believes the child may need mental health services for educational purposes, he or she may request a concurrent assessment by the mental health agency. If the child is placed by child welfare in a group home and has a viable IEP, the department or parent may request the addition of a mental health overlay to determine the appropriate placement. This process takes approximately 60 days to complete. During that time, all parties should meet to determine the needs of the child, as if he or she were already placed in the parental home.

Parents must attend the IEP meeting to ensure that the needs of the child are identified and met and to make clear that the child is entitled to all "designated instruction and services" he or she needs in order to benefit from education. "Designated instruction and services" may include speech therapy, individual therapy, family therapy, or any other services, including assistive technology, that could aid the child in an educational setting.[62]

If the child is 14 or older, a "transitional" IEP to prepare the child for employment and independent living must be developed. It is important to include all the relevant services on the IEP, as inclusion of a service on the IEP establishes the child's legal entitlement to its provision. This is also the case with an IPP pursuant to a legal eligibility finding by the regional center.

The family and the child welfare agency plan for the child's return at a case conference attended by the parent, child, social worker, and attorneys. Court, counsel, and social services should assist the parent in representing his or her child's interest in the meetings. The purpose of the case conference is to generate the service blueprint that lists all the child's needs and the agencies that will be providing services to meet those needs.

During this transition, the child spends more and more time at the parental home. The court orders the child returned home. If necessary, the child's current school district (where the group home is located) and his or her home school district (where parent resides) develop a new IEP to help implement the permanent IEP.[63] The

new school must implement the current IEP for 30 days, after which they can ratify the IEP or hold another IEP meeting to modify its provisions.[64]

For the next 90 or 180 days, the child welfare agency and all attorneys monitor the case. The modeler attends service provision meetings with the parent and shows him or her how to advocate forcefully for the child's rights. The court holds a hearing to determine whether the blueprint is in place and whether the parent is ready to take on the responsibilities of child advocacy. If the placement is safe and stable, the court terminates jurisdiction.

CONCLUSION

Maintaining at-risk children in the family home takes a new worldview and a commitment by all professionals involved. Interagency collaboration is not an easy task but is necessary to ensure that our children receive the services they need and deserve. Securing these services also requires a bench and bar committed to using new methods in meeting their responsibilities. Use of the community resource approach where applicable will get at-risk children out of the system faster and home to better-prepared parents. To use it effectively, all the professionals involved need to think holistically and anticipate at the beginning of a case where they hope to be at the end.

Reasonable efforts must include not just removing the negatives from a family relationship, but also fostering and building new positive results. Judicial orders, collaborative conferencing, and showing parents how to advocate successfully for their children can be used effectively to this end. When that happens, the juvenile court will be working to move the family beyond reunification, toward empowerment. And when a parent is empowered to advocate for a child, to realize his or her capability to meet the child's needs, then the family is fundamentally intact. In a real and meaningful way, the child has come home.

NOTES

1. *See, e.g.,* Stanley v. Illinois, 405 U.S. 645, 657–58 (1972) (requiring that parental unfitness be proved at a hearing); Santosky v. Kramer, 455 U.S. 745, 768–70 (1982) (requiring that determination of parental unfitness be supported by clear and convincing evidence).

2. CHILD WELFARE LEAGUE OF AMERICA, STANDARDS FOR SERVICES TO CHILDREN AND FAMILIES (1985).

3. Adoption Assistance & Child Welfare Act, Pub. L. No. 96-272, 94 Stat. 516 (codified as amended at 42 U.S.C. §§ 620–628, 670–676 (1994 & Supp. V 1999)).

4. Title IV-E, Social Security Act, 42 U.S.C. §§ 471(a)(5), 672(a)(2) (1994 & Supp. V 1999).

5. 45 C.F.R. § 1356.21(d)(4) (2001).

6. CAL. WELF. & INST. CODE §§ 300–395, 16,500–16,525.30 (1998 & Supp. 2001).

7. *Id.* § 300.

8. *Id.* § 300(a)–(e).

9. *Id.* § 300(j).

10. Education of the Handicapped Act, Pub. L. No. 91-230, 84 Stat. 175 (1970).

11. Individuals With Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified as amended at 20 U.S.C. §§ 1400–1487 (2000)).

12. 20 U.S.C. § 1400(d)(1)(A)–(B) (2000).

13. 34 C.F.R. §§ 300.1–300.754 (2001).

14. CAL. EDUC. CODE §§ 56,000–56,885 (West 1989 & Supp. 2001); CAL. CODE REGS., tit. 5, §§ 3000–3100 (2001).

15. 34 C.F.R. § 300.300.

16. 34 C.F.R. § 300.7(b)1–(b)13.

17. *See* 34 C.F.R. §§ 300.340–300.350.

18. 20 U.S.C. § 1401(22) (2000).

19. 34 C.F.R. § 300.24(a).

20. 34 C.F.R. § 300.342(b)(1)(ii).

21. Christopher P. by Norma P. v. Marcus, 915 F.2d 794, 800 (2d Cir. 1990) (emphasis omitted).

22. *See* 20 U.S.C. § 1415(b).

23. Interagency Responsibilities for Providing Services to Handicapped Children, 1984 Cal. Stat. 1747, § 2 (codified as amended at CAL. GOV'T CODE §§ 7570–7588 (West 1995 & Supp. 2001). In some counties outside of Los Angeles, the law is known as AB 2726, a bill that amended the statutory scheme. *See* 1996 Cal. Stat. 654, § 2.

24. CAL. GOV'T CODE §§ 7570, 7576.

25. CAL. CODE REGS., tit. 2, §§ 60,000–60,610 (2001).

26. *Id.* § 60,100.

27. 42 U.S.C. §§ 1396–1396v (1994 & Supp. V 1999).

28. *Id.* § 1396d(r)(5).

29. For a complete list, see CAL. CODE REGS., tit. 9, §§ 1810.201–1810.254 (2001).

30. *See* Emily Q. v. Bonta, No. CV-98-4181-AHM (AIJx), 2001 U.S. Dist. LEXIS 22305, at *41 (C.D. Cal. Mar. 30, 2001).

NOTES

31. *Id.* at *27–28.

32. 1977 Cal. Stat. 1252, § 550 (codified as amended at CAL. WELF. & INST. CODE §§ 4500–4846 (West 1998 & Supp. 2001)). Sections 4620–4669.75 set forth specific requirements for regional centers. These centers also provide early intervention services to infants and toddlers (from birth through age 2) with disabilities under Part C of IDEA.

33. CAL. WELF. & INST. CODE § 4642.

34. *Id.* § 4512(a); *see* CAL. CODE REGS., tit. 17, §§ 54,000–58,680 (2001).

35. CAL. WELF. & INST. CODE § 4512(a).

36. *Id.* § 4646.

37. Regional centers use the term *consumer* to refer to a person eligible for their services.

38. CAL. WELF. & INST. CODE § 4512(j).

39. *Id.* §§ 4646–4646.5.

40. For a complete list, *see* CAL. WELF. & INST. CODE § 4512(b).

41. CAL. WELF. & INST. CODE § 4646(a).

42. *Id.* § 4648(a).

43. *Id.* § 4648(b).

44. *Id.* § 4648(c).

45. *Id.* § 4648(d).

46. *Id.* § 4648(e).

47. Ass'n for Retarded Citizens v. Dep't of Devel. Servs., 211 Cal. Rptr. 758 (1985).

48. CAL. WELF. & INST. CODE §§ 4700–4715.

49. *Id.* § 362(a).

50. *Id.* §§ 300.2, 309, 319, 361.5.

51. *Id.* §§ 311, 325, 332.

52. *Id.* § 319(d)(1)–(2).

53. *Id.* §§ 319(e), 361.5.

54. *Id.* §§ 361(d), 366.21(e).

55. This placement may also be with a committed relative as well as a parent.

56. *Modeler* is a term that describes the person who assists the family, by presence or advice, as an advocate at various meetings held for the child. A modeler can be a lawyer, social worker, or community advocate who shows the parent or guardian step by step how to negotiate with various agencies for needed services.

57. *See* CAL. EDUC. CODE §§ 56,034, 56,365–66 (West 1989 & Supp. 2001).

58. *See supra* notes 30–31 and accompanying text. This type of service is also known as "wrap-around services." See, e.g., CAL. WELF. & INST. CODE §§ 18,250–52 (West 2001).

59. CAL. WELF. & INST. CODE § 300 (West 1998 & Supp. 2001).

60. *See supra* note 49 and accompanying text.

61. *See* CAL. EDUC. CODE § 56,321.

62. *Id.* § 56,363.

63. *Id.* § 56,325.

64. *Id.*